IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 622 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESAJI PUNJAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 622 of 2002

MR VIJAY N RAVAL for Petitioner No. 1

MRS HANSA PUNANI, APP for Respondent No. 1

MR VIJAY H PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 25/09/2003

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the legality and validity of the common order

dated 3-7-2002 passed by the learned Additional City Sessions Judge, Ahmedabad, in Criminal Revision Application No.26 of 2002 and Criminal Revision Application No.46 of 2002 reviewing the common order dated 22-1-2002 passed by the learned Metropolitan Magistrate, Court No.18, Ahmedabad, by which interim custody of the truck bearing registration No.GJ-1-V-6112 was handed over to the respondent No.2.

2. The case in short is that the present petitioner filed one application into the Court of learned Metropolitan Magistrate, Court No.18 on 2-1-2002 claiming interim custody of the truck in question. The respondent No.2 also filed application under Sec.451 of the Code of Criminal Procedure on 31-12-2001 praying interim custody of the said truck. After hearing the learned advocates appearing for the respective parties, learned Metropolitan Magistrate, Court No.18, Ahmedabad, passed a common order dated 22-1-2002 rejecting both the applications. Against the said common order, Criminal Revision Application No.26 of 2002 has been preferred by the present respondent No.2 while Criminal Revision Application No.46 of 2002 has been preferred by the present petitioner. After hearing the learned counsel appearing for the respective parties, learned Addl. City Sessions Judge, Ahmedabad, passed a common order on 3-7-2002 allowing Criminal Revision Application No.26 of 2002 filed by the respondent No.2 and rejected the revision preferred by the present petitioner and interim custody of the vehicle in question was handed over to the respondent No.2 with certain conditions which is giving rise to prefer the present petition.

3. Heard Mr.V.N.Raval, Mrs.Hansa Punani and Mr.V.H.Patel, learned counsel for the petitioner and the respondent Nos.1 and 2 respectively at length.

4. While deciding the application under Sec.451 of the Code of Criminal Procedure, the Court has to take into consideration whether the muddamal vehicle is required to be handed over to the concerned person immediately or it should be allowed to be kept in the Court or the Police Station premises so as to become junk. It has been held by the Apex Court in a case reported in (2001) 9 SCC 718 more particularly at Head-Note, which reads as under:

"Criminal Procedure Code, 1973 - S.451
Conditional release of vehicle during the trial
No advisable to keep the vehicle in court compound indefinitely--More advisable to release

it to the owner by imposing certain conditions during the pendency of the trial."

It has also been held by Apex Court in another case reported in 2002 SCC (Cri) 1034, the headnote of which reads as under:

"Criminal Procedure Code, 1973 - S.451
Conditional release of vehicle during trial--Subject to certain conditions, custody of vehicle could be entrusted temporarily to its registered owner during the pendency of the trial."

5. It is pertinent to note that the petitioner is claiming the interim custody of the truck in question. The question which arises for consideration of this Court is as to whether the order passed by the revisional Court granting interim custody of the truck to the respondent No.2 who is the registered owner is required to be interfered with in view of the settled law as laid down by the Apex Court in the cases as mentioned above. In view of the aforesaid decisions of the Apex Court, without entering into the other aspects of the matter, I am of the opinion that the interim custody of the truck in question is required to be given to the respondent No.2 who is admittedly the registered owner of the truck in question, during the pendency and final outcome of the trial. Hence, the common order dated 3-7-2002 passed by the learned Addl. Sessions Judge, Ahmedabad City in Criminal Revision Application No.26 of 2002 and Criminal Revision Application No.46 of 2002 does not require any interference and this petition deserves to be rejected.

6. This petition is hereby rejected. Rule is discharged.

(R.P.DHOLAKIA,J.)
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